

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket 96-45
)	
NPCR, INC. d/b/a NEXTEL PARTNERS)	DA 04-998
)	
Supplement to Petition for Designation as an)	
Eligible Telecommunications Carrier)	
in the State of Alabama)	
_____)	

**NEXTEL PARTNERS' REPLY TO
COMMENTS OF CENTURYTEL, INC.**

NPCR, Inc. d/b/a Nextel Partners ("Nextel Partners"), by its undersigned counsel, hereby submits its "Reply" to the Comments filed on May 7, 2004 by CenturyTel, Inc. ("CenturyTel") in the above-captioned proceeding, which concerns Nextel Partners' Petition for Designation as an Eligible Telecommunications Carrier ("ETC") in the State of Alabama¹ as recently supplemented in compliance with the requirements of the Commission's *Virginia Cellular Order*.²

Nextel Partners filed its Supplement to its Petition on March 24, 2004, and the Commission requested comment by Public Notice issued on April 12, 2004.³ In its May

¹Nextel Partners' Petition for the Designation as an Eligible Telecommunications Carrier in the State of Alabama (hereinafter, the "Petition") was filed on April 4, 2003 in Commission Docket No. 96-45.

² *In the Matter of Federal-State Joint Board on Universal Service: Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, 19 FCC Rcd 1563 (2004) ("*Virginia Cellular*"). In *Virginia Cellular*, the Commission set forth several requirements for ETC designation in rural areas, and stated that "[t]he framework enunciated in this Order shall apply to all ETC designations for rural areas pending further action by the Commission." *Virginia Cellular* at ¶ 4.

³ FCC Public Notice, "Parties Are Invited to Comment on Supplemented Petitions for Eligible Telecommunications Carrier Designations," CC Docket No. 96-45, DA 04-998, (released April 12, 2004).

7, 2004 Comments, CenturyTel opposes the grant of Nextel Partners' Petition in Alabama, claiming generally that: (i) the benefits of granting Nextel Partners ETC designation do not outweigh the costs;⁴ (ii) grant of the Petition is not necessary for Nextel Partners to maintain, improve, or expand its services;⁵ (iii) Nextel Partners has failed to provide evidence that its service plans include "the minimum local usage required to meet the definition of supported services,"⁶ and (iv) Nextel Partners has failed to prove that its supported services will be "used primarily in the high cost areas for which it seeks funding." As discussed in greater detail below, each of these arguments lacks merit, and Nextel Partners' Petition for designation as an ETC in Alabama should be expeditiously considered on its merits and granted by the Commission.⁷

A. Designation of Nextel Partners as an ETC in Alabama Will Provide Important Benefits to the Citizens of Alabama

CenturyTel's assertion that the costs of designation of Nextel Partners as an ETC will outweigh the benefits of such designation has no merit.⁸ CenturyTel does not support its claims with any facts, evidence or analysis other than to state that the cost of designating Nextel Partners as an ETC would be the projected \$696,000 annually that Nextel Partners would receive in disbursements from the Universal Service Fund. Of course, since the \$696,000 of USF funding to be received by Nextel Partners annually is earmarked for, and must be expended by Nextel Partners in, the Designated Areas within the State of Alabama, the receipt of these monies actually represents a direct benefit to

⁴ CenturyTel Comments at 3-4.

⁵ *Id.* at 1.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 3-4.

Alabama consumers that more than offsets the very small percentage of the approximately \$3 Billion High Cost Fund that they constitute.

The Universal Service Program is not only intended to bring local phone service to consumers in rural, high cost and insular areas, but it is also intended to ensure that these consumers have

access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.⁹

Under the Commission's Universal Service policies, consumers residing in high cost areas and low income consumers in the Alabama should be afforded the same opportunities as other citizens to choose a telecommunications carrier, to access new technologies, realize the benefits of mobility and access to wireless emergency services and to select from a menu of innovative services.¹⁰ The record in this proceeding clearly demonstrates that Nextel Partners' designation as an ETC will bring these telecommunications benefits to Alabama telecommunications users in rural, high cost and insular areas.

⁹ 47 U.S.C. § 254(b)(3).

¹⁰ See *Virginia Cellular Order* at ¶¶ 12 and 29 and Separate Statement of Chairman Michael K. Powell at ¶ 1 ("we recognize the unique value that mobile services provide to rural consumers by giving added substance to the public interest standard by which we evaluate wireless eligible telecommunications carriers.") See also *In the Matter of Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776 at ¶¶ 4, 21 (1997) ("Universal Service Order"). See also *Application of WWC Texas RSA Limited Partnership for Designation as an Eligible Telecommunications Carrier Pursuant to 47 U.S.C. § 214 (e) and PUC SUBST. R. 26.418*, PUC Docket Nos. 22289 and 22295, SOAH Docket Nos. 473-00-1167 and 473-00-1168 (Texas Public Utility Commission, October 30, 2000) ("*Texas PUC Order*") at 2.

Nextel Partners' predominant business focus is to bring competitive state-of-the-art digital mobile telecommunications services to citizens living in secondary and rural markets. And in doing so, Nextel Partners provides these citizens access to the same nationwide Nextel system that is operated by Nextel Communications, Inc. in the primary U.S. markets.

In particular, Nextel Partners adds the element of *mobility* to the provision of Universal Service Fund ("USF") supported services -- a valuable option that the incumbent wireline LECs cannot match. This essential difference is particularly beneficial to consumers in rural areas, including remote roads and highways, where wireline telephones are more widely spaced than in concentrated urban areas. As the Commission emphasizes in its recent *Virginia Cellular Order*:

. . . the mobility of telecommunications assists consumers in rural areas who often must drive significant distances to places of employment, stores, schools, and other critical community locations. In addition, the availability of a wireless universal service offering provides access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities.¹¹

Nextel Partners also provides a larger local calling area than the ILECs, the acknowledged benefits of mobile telephony service and, where requested by the PSAP, GPS location assistance for customers calling 911.¹² These benefits will be expanded and made available to more rural customers in Alabama as a result of Nextel Partners' ETC designation. Century Tel's complaints are nothing more than an inappropriate attempt to protect its historical monopoly in rural areas.

¹¹ *Virginia Cellular Order* at ¶ 29.

¹² Nextel Partners' Petition at 7; March 24 Supplement at 7, § 7 ("Public Interest") and Exhibit 3 ("Local Calling Area Maps for Alabama").

B. Nextel Partners is Strongly Committed to Continuing Building of its System and Meeting all Reasonable Requests for Service in its Designated Areas in Alabama.

Nextel Partners has invested more than \$36 million in network infrastructure in the State of Alabama since the company began operating there in June, 2000. This amount covers only investment in capital and does not include operational expenses or expenditures on frequency acquisition. During this time period, Nextel Partners' line counts in Alabama have grown from zero to over 56,000. Nextel Partners' commitment to building and maintaining its system in Alabama is supported by this strong track record over the past 4 years.

CenturyTel illogically attempts to argue that Nextel Partners' extensive commitment to building and maintaining a state-of-the-art digital mobile system in Alabama is somehow a basis for *denying* Nextel Partners' petition for ETC designation in Alabama. CenturyTel contends that, since Nextel Partners already successfully serves much of rural Alabama, it is "unclear" whether Nextel Partners requires USF monies to "maintain rates that are affordable and reasonably comparable."¹³ CenturyTel's contention has no merit. If CenturyTel's standard were applied, then all rural ILECs would be ineligible for USF monies, since they already provide service throughout their study areas. Again, CenturyTel is simply trying to preserve its inappropriate stranglehold on USF funding and thereby prevent additional competition and choice for Alabama consumers.

Under Section 254(e) of the Communications Act of 1934 as amended (the "Act"), USF support for high cost, rural and insular areas is intended to help defray the

¹³ CenturyTel Comments at 3.

higher expenses in such areas associated with the “provision, maintenance and upgrading of facilities and services for which the support is intended.”¹⁴ Applicable law does not disqualify a petitioner for ETC designation on the basis that it already provides service in a designated area. Instead, ETC designation helps to ensure that the carrier will commit to provide the full menu of USF-supported services in its designated service territory, benefiting consumers. Although Nextel Partners presently provides service in many parts of rural Alabama, it is not yet an ETC, and does not, and cannot, provide all of the USF-supported services to Alabama’s rural citizens.¹⁵ The receipt of USF support will assist Nextel Partners in provision of all of these services in Alabama.¹⁶ Moreover, the receipt of USF support will assist Nextel Partners in further build-out and improvement of its system in the designated areas in Alabama. The fact that Nextel Partners already serves much of this area only serves to underscore Nextel Partners’ firm commitment to the citizens of rural Alabama.

D. Nextel Need Not Commit to Providing the Same Local Service at the Same Prices as the Rural ILECs in order to be Designated as an ETC in Alabama

CenturyTel requests that the Commission require Nextel Partners to commit to provide the same local usage at the same prices as the incumbent local exchange carrier

¹⁴ See 47 U.S.C. § 254(e).

¹⁵ Providers that are not designated as ETCs cannot provide all of the USF-supported services. For example, only ETCs can offer Lifeline and Linkup services to low-income consumers, because ETC status is a precondition for such service provision. See 47 C.F.R. Part 54, Subpart E.

¹⁶ Contrary to CenturyTel’s claims, Nextel Partners is *not* required to demonstrate in its Petition or Supplement that it requires USF funds in order to “maintain rates that are affordable and reasonably comparable.” CenturyTel Comments at 3. The showings that are required of a petitioner for ETC designation are specified in the Act, the Commission’s Rules, and Commission case law, most notably in the Commission’s *Virginia Cellular Order*. CenturyTel has not pointed out any required showing that Nextel Partners has failed to make.

prior to designating Nextel Partners as an ETC in Alabama. However, such a commitment is *not* a precondition of ETC designation under applicable law, and CenturyTel points to no Commission Rule or case precedent that would support CenturyTel's request. The Commission's *Virginia Cellular Order* recently clarified that:

[a]lthough the Commission's rules define 'local usage' as 'an amount of minutes of use of wire center service, prescribed by the Commission, provided free of charge to end users,' the Commission has not specified a number of minutes of use."¹⁷

Nextel Partners committed in its Petition to "comply with any and all minimum local usage requirements adopted by the Commission,"¹⁸ accordingly when and if the Commission sets a specific standard for local usage, Nextel Partners will comply with that standard. CenturyTel has not called into question the *bona fides* of Nextel Partners' commitment in its Petition, or its willingness or capability to provide the requisite amount of local usage to consumers in Alabama.

Moreover, CenturyTel's proposal to attempt to equate Nextel Partners' local service provision with the local service offered by rural ILECS is infeasible in practice. Such a requirement would be difficult or impossible to implement, since (as demonstrated in Nextel Partners' March 24, 2004 Supplement), the scope of Nextel Partners' local calling areas in Alabama far exceed the local calling areas of rural ILECs, and any attempt to fairly equate Nextel Partners' "local usage" service offerings with the local service of a wireline ILEC would be at best extremely complicated.¹⁹ Nextel

¹⁷ See *Virginia Cellular Order* at n.59.

¹⁸ Nextel Partners Alabama Petition at 3, § 2.

¹⁹ See Nextel Partners' March 24, 2004 Supplement at 8-9 ("Nextel Partners attaches as **"Exhibit 3"** hereto four separate maps of its local calling areas for the State of Alabama, depicting local calling areas for customers in Montgomery, Mobile, Phenix City and Opelika. As can be seen, in each case, Nextel Partners' local calling area is very

Partners' service plans in Alabama provide an appropriate amount of local usage – except that “local usage” in Nextel Partners' parlance includes most of the State of Alabama and parts of neighboring states, thereby saving consumers toll charges that would be imposed by the rural ILECs.²⁰

E. Nextel Partners' Designation as an ETC in Alabama Need Not Await Implementation of Safeguards to Prevent Speculative Potential Abuses that are Not Demonstrated to Exist.

CenturyTel's claim that Nextel Partners cannot be granted ETC designation because no safeguards exist that would prevent Nextel Partners from distributing free cell phones to households in order to receive extra USF funding lacks merit and amounts to nothing more than unsupported speculation. CenturyTel does not provide any evidence that Nextel Partners, or for that matter, *any wireless ETC*, has embarked upon such a course. Nor does CenturyTel provide any evidence that the financial incentive exists in any of the high cost areas in Alabama served by Nextel Partners to give away free wireless telephones and wireless service simply in order to obtain additional USF funding. The underlying presumption, *viz.*, that per-line USF subsidies in any Alabama study area served by Nextel Partners are so high as to exceed the cost of a free wireless phone and associated service, is not only unproven, but is also counterintuitive. Accordingly, there is no basis for delaying grant of Nextel Partners' Petition to address problems that are not demonstrated to exist.

large: customers in Montgomery, Mobile and Opelika have local calling areas that cover the entire state of Alabama, including some portions of Florida and Georgia. Nextel Partners customers in Phenix City have a local calling area that covers the southern half of the State of Alabama, as well as the entire State of Georgia and the northwestern part of the State of Florida. These local calling areas are far larger than local calling areas typically offered by rural ILECs.”)

²⁰ See *Virginia Cellular Order* at ¶ 29.

Finally, CenturyTel's insistence that the "mobile nature of the service provided by Nextel Partners threatens to undermine the universal service fund" by allowing subscribers in high cost areas to use their handheld phones in areas other than the study areas for which USF support is received lacks merit. CenturyTel's essential dispute is not with Nextel Partners' Petition in Alabama, but rather with the methodology adopted by the Commission in its rules that employs the subscriber's residential address to determine the locus of USF support.²¹ Apparently, CenturyTel would have no objection if a wireless customer receiving service confined his or her use of the handset within the bounds of the rural ILEC study area in which his or her residential address is located – but this is not the way wireless customers use, or should use, their mobile phones.

To the extent that the arguments raised by CenturyTel seek the alteration of the Commission's existing Rules concerning the USF locus of support, they exceed the scope of this proceeding and cannot properly be addressed in the context of determining Nextel Partners' qualification for ETC status.²² The Commission is bound to abide by *existing* rules and policies in all proceedings,²³ and this proceeding is no exception. At any rate,

²¹ CenturyTel Comments at 4; *see also* 47 C.F.R. § 54.307(b).

²² *See, e.g., In the Matter of Federal-State Joint Board on Universal Service; RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area In the State of Alabama*, 17 FCC Rcd 23532 at ¶¶ 22 and 26 (2002) ("RCC Order") at ¶ 32 ("We recognize that these parties raise important issues regarding universal service high-cost support. We find, however, that these *concerns* are beyond the scope of this Order, which considers whether to designate a particular carrier as an ETC.")

²³ *CSRA Cablevision, Inc.*, 47 FCC 2d 572 at ¶ 6 (1974) ("Under the Administrative Procedure Act and the relevant judicial decision, the Commission is bound to follow its existing rules until they have been amended pursuant to the procedures specified by that act.").

CenturyTel's concerns are not relevant to, and should not delay, the Commission's grant of Nextel Partners' Petition for ETC status in Alabama.

III. CONCLUSION

Because all applicable legal and public interest requirements have been met, Nextel Partners requests that the Commission promptly grant Nextel Partners' Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama.

Respectfully submitted,

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